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April 16, 2020

**VIA ELECTRONIC FILING**

The Honorable Jocelyn G. Boyd  
Chief Clerk/Executive Director  
Public Service Commission of South Carolina  
101 Executive Center Drive, Suite 100  
Columbia SC 29210

**Re: Duke Energy Carolinas, LLC's Application for a Certificate of Public Convenience and Necessity for the Provision of Steam (Heat) Service and for Approval of a Contract with Clemson University  
Docket No. 2017-47-E**

Dear Ms. Boyd:

The purpose of this letter is to notify the Public Service Commission of South Carolina (the "Commission") that Duke Energy Carolinas, LLC ("DEC" or the "Company") and Clemson University ("Clemson") have amended the Steam Supply and Purchase Agreement and the Ground Lease and Easement Agreement previously approved by Commission Order No. 2017-453. Executed copies of these amendments are enclosed herewith for filing.<sup>1</sup>

The Commission reviewed the Company's application and granted a Certificate of Public Convenience and Necessity ("CPCN") for the sale of steam to Clemson in this docket in Order No. 2017-453 on July 18, 2017. Commission Order No. 2017-453 also approved the Steam Supply and Purchase Agreement, which sets forth the terms and conditions of the steam supply and electrical islanding capabilities from DEC to Clemson. Pursuant to the Steam Supply and Purchase Agreement, all thermal energy recovered from the process of power generation at the Combined Heat and Power Generating Facility ("CHP Facility") will be sold to Clemson to meet its thermal energy requirements. The Steam Supply and Purchase Agreement also provides that Clemson will purchase steam for thirty-five years, beginning on the Commercial Operational Date. As set forth in the Application, revenues received from the sale of steam will be credited back to DEC's electric customers.

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<sup>1</sup> DEC and Clemson previously amended the Steam Supply and Purchase Agreement and the Ground Lease and Easement Agreement to update the site map to reflect the new location of the project. The Company notified the Commission of the location change by filing a letter in this docket on May 5, 2017.

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Due to a delay in construction of the steam interconnection facilities to enable the receipt of steam from the CHP Facility, Clemson was unable to receive steam by the Commercial Operational Date, which was December 31, 2019. Accordingly, Clemson and DEC have amended the Steam Supply and Purchase Agreement and the Ground Lease and Easement Agreement to provide that Clemson will purchase steam for a period of thirty-five years beginning on the earlier occurrence of (i) June 30, 2020, or (ii) when Clemson's steam interconnection facilities are completed and operational.

Sincerely,



Heather Shirley Smith

Enclosures

cc: Parties of record

## SECOND AMENDMENT TO STEAM PURCHASE AND SALE AGREEMENT

THIS SECOND AMENDMENT TO STEAM PURCHASE AND SALE AGREEMENT (this "Amendment") is entered into as of the [28]<sup>th</sup> day of February, 2020, between Duke Energy Carolinas, LLC, a North Carolina limited liability company ("Duke"), and Clemson University, a body politic under the laws of the State of South Carolina ("Clemson"). Duke and Clemson are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

### STATEMENT OF PURPOSE

Duke and Clemson entered into that certain Steam Purchase and Sale Agreement, dated February 2, 2017 (the "Agreement").

Duke and Clemson desire to amend the Agreement to adjust the commencement of the term for the Agreement, amend certain conditions precedent to the obligations of the Parties under the Agreement and amend certain definitions related thereto.

NOW, THEREFORE, in consideration of the foregoing Statement of Purpose, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows.

### Article 1

#### DEFINITIONS

Capitalized terms not otherwise defined herein shall have the same meanings as defined in the Agreement.

**"Term Commencement Date"** means the date identified in written notice from Seller to Buyer as the date upon which all Buyer Conditions Precedent and all Seller Conditions Precedent have been satisfied and the Delivery Term will commence under this Agreement.

### Article 2

#### AMENDMENT

The Agreement is hereby amended as follows:

**2.1 Amendment to Definitions.** The definitions of Contract Year and Delivery Term are amended and restated in their entirety as follows:

**"Contract Year"** means each calendar year during the Term, commencing on the Term Commencement Date, provided that if the first and last Contract Years are not full calendar years, the first Contract Year will mean the period from the Term Commencement Date to December 31

of such calendar year, and the last Contract Year will mean the period from January 1 of the last Contract Year through the last day of the Term.

“Delivery Term” means the period of time commencing on the Term Commencement Date and ending on the expiration or earlier termination of the Term.

**2.2 Amendment to Term.** Section 2.1 of the Agreement is amended and restated in its entirety as follows:

2.1 Term. The term of this Agreement (the “Term”) will commence on the Effective Date and will remain in effect for a period of 35 years from the Term Commencement Date, unless earlier terminated in accordance with the provisions of this Agreement.

**2.3 Amendment to Buyer Conditions Precedent.** Section 2.3 of the Agreement is deleted in its entirety and restated as follows:

2.3 Buyer Conditions Precedent. The following will be the “Buyer Conditions Precedent”:

- (a) Approval of this Agreement by the Board of Trustees of Buyer;
- (b) The occurrence of the Commercial Operation Date, and the completion by Seller of, and operability of, any and all Interconnection Facilities necessary for the delivery of Steam to Buyer at the applicable Delivery Points and necessary for the receipt of Condensate from Buyer at the applicable Delivery Points;
- (c) Receipt by Seller of all applicable State Regulatory Approvals and all Permits required under applicable Law to construct, own and operate the Facility or any Interconnection Facilities, lease the Site and provide the Steam to be provided by Seller to Buyer hereunder, including the Permits listed on Exhibit E;
- (d) Receipt by Buyer of all Permits required for the performance by it of its obligations under this Agreement and the Ground Lease;
- (e) Execution and delivery of the Ground Lease by Seller;
- (f) The absence of any Event of Default or facts and circumstances that, with the passage of time or giving of notice, would give rise to an Event of Default with respect to Seller hereunder; and
- (g) the earlier occurrence of (i) June 30, 2020, or (ii) completion by Buyer of, and operability of, any and all Interconnection Facilities necessary for the receipt of Steam by Buyer from Seller at the applicable Delivery Points and necessary for the delivery of Condensate from Buyer to Seller at the applicable Delivery Points.

**2.4 Amendment to Monthly Invoices.** Section 4.2(a) is hereby amended and restated in its entirety as follows:



#### 4.2 Monthly Invoices.

(a) On or before the tenth Business Day of each calendar month during the Delivery Term following the calendar month in which the Term Commencement Date occurs, Seller will prepare an invoice showing the Monthly Payment payable by Buyer to Seller pursuant to this Agreement ("Monthly Invoice"). If the first Contract Year does not begin on the first day of the month, then the first Monthly Invoice will include a prorated calculation for the period from the Term Commencement Date to the end of the month in which the Term Commencement Date occurs.

### Article 3

#### MISCELLANEOUS

**3.1 Effect of Amendment.** This Amendment shall be a binding agreement upon the Parties. Except as expressly amended hereby, the Agreement shall remain in full force and effect in accordance with the provisions thereof.

**3.2 Governing Law.** This Amendment shall be governed by and construed in accordance with the laws of the State of South Carolina, without reference to its conflict of laws principles.

**3.3 Headings.** The section headings of this Amendment are for reference purposes only and are to be given no effect in the construction or interpretation hereof.


**3.4 Entire Agreement.** This Amendment constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, of the Parties relating to that same subject matter.

**3.5 Severability.** If any provision of this Amendment or the application of this Amendment to any Person or circumstance shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, then (i) the remainder of this Amendment and the application of that provision to Persons or circumstances other than those as to which it is specifically held invalid or unenforceable shall not be affected, and every remaining provision of this Amendment shall be valid and binding to the fullest extent permitted by applicable laws, and (ii) a suitable and equitable provision shall be substituted for such invalid or unenforceable provision in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision.

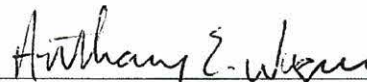
**3.6 Counterparts; Facsimile Signatures.** This Amendment may be executed by the Parties in multiple counterparts and shall be effective as of the date set forth above when each Party shall have executed and delivered a counterpart hereof, whether or not the same counterpart is executed and delivered by each Party. When so executed and delivered, each such counterpart shall be deemed an original and all such counterparts shall be deemed one and the same document. Transmission of images of signed signature pages by facsimile, e-mail or other electronic means shall have the same effect as the delivery of manually signed documents in person.

IN WITNESS WHEREOF, the parties hereto have caused this SECONDAMENDMENT TO STEAM PURCHASE AND SALE AGREEMENT to be executed by their respective duly authorized representatives as of the date first above written.

**DUKE ENERGY CAROLINAS, LLC**

By:   
Name: Robert F. Caldwell  
Title: SVP+ President, Duke Energy Renewables + Business Development

**CLEMSON UNIVERSITY**

By:   
Name: Anthony E. Wagner  
Title: VP Finance + operations

## SECOND AMENDMENT TO GROUND LEASE AND EASEMENT AGREEMENT

THIS SECOND AMENDMENT TO GROUND LEASE AND EASEMENT AGREEMENT (this "Amendment") is entered into as of the [28]<sup>th</sup> day of February, 2020, between Duke Energy Carolinas, LLC, a North Carolina limited liability company ("Duke"), and Clemson University, a body politic under the laws of the State of South Carolina ("Clemson"). Duke and Clemson are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

### STATEMENT OF PURPOSE

Duke and Clemson entered into that certain Ground Lease and Easement Agreement, dated February 2, 2017 (the "Agreement").

Duke and Clemson desire to amend the Agreement to adjust the commencement of the term for the Agreement, amend certain conditions precedent to the obligations of the Parties under the Agreement and amend certain definitions related thereto.

NOW, THEREFORE, in consideration of the foregoing Statement of Purpose, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows.

### Article 1

#### DEFINITIONS

Capitalized terms not otherwise defined herein shall have the same meanings as defined in the Agreement.

**"Term Commencement Date"** means the date identified in written notice from Seller to Buyer as the date upon which the Operational Term will commence under this Agreement.

### Article 2

#### AMENDMENT

The Agreement is hereby amended as follows:

**2.1 Amendment to Sections 2.1.1 and 2.1.2.** Sections 2.1.1 and 2.1.2 of the Agreement is hereby amended and restated in their entirety as follows:

2.1.1 The Development Period (the period during which Tenant performs development activities, including but not limited to, obtaining permits, securing its position to interconnect into the grid and constructing the Facility), shall commence on the Effective Date and continue until the Target Commercial Operation Date (as defined in the SSPA). If Tenant notifies Landlord at least thirty (30) days prior to the expiration of the Development Period that Tenant has commenced



construction of the Facility, then the Development Period shall not expire on its scheduled expiration date but shall be automatically extended until the occurrence of the Term Commencement Date. Tenant shall have "commenced construction" of the Facility if and when Tenant commences the grading on the Site, and is diligently pursuing construction of the Facility on the Property. The Development Period respecting the Facility shall, in all events, terminate on the Term Commencement Date and the Operational Term for the Facility shall commence.

2.1.2 The Operational Term (the period during which the Facility is generating and delivering Steam (as such term(s) is/are defined in the SSPA) as well as generating electricity), if it occurs, shall commence on the Term Commencement Date as designated by Tenant in writing, and continue to the date that is thirty-five (35) years following such Term Commencement Date or such earlier termination date as the parties hereto may mutually agree upon in the event of a termination of the SSPA. The Development Period and the Operational Term are herein sometimes collectively referred to as the "Term".

**2.2 Amendment to Definitions.** The Definition of Operational Term is amended and restated in its entirety as follows:

25. "Operational Term" means the period during which the Facility is generating and delivering Steam as such term(s) are defined in the SSPA, commencing upon the Term Commencement Date and terminating upon expiration or earlier termination as provided herein in Section 2.1.2.

### Article 3

#### MISCELLANEOUS

**3.1 Effect of Amendment.** This Amendment shall be a binding agreement upon the Parties. Except as expressly amended hereby, the Agreement shall remain in full force and effect in accordance with the provisions thereof.

**3.2 Governing Law.** This Amendment shall be governed by and construed in accordance with the laws of the State of South Carolina, without reference to its conflict of laws principles.

**3.3 Headings.** The section headings of this Amendment are for reference purposes only and are to be given no effect in the construction or interpretation hereof.

**3.4 Entire Agreement.** This Amendment constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, of the Parties relating to that same subject matter.

**3.5 Severability.** If any provision of this Amendment or the application of this Amendment to any Person or circumstance shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, then (i) the remainder of this Amendment and the application of that provision to Persons or circumstances other than those as to which it is specifically held invalid or unenforceable shall not be affected, and every remaining provision of this Amendment shall be




valid and binding to the fullest extent permitted by applicable laws, and (ii) a suitable and equitable provision shall be substituted for such invalid or unenforceable provision in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision.

**3.6 Counterparts; Facsimile Signatures.** This Amendment may be executed by the Parties in multiple counterparts and shall be effective as of the date set forth above when each Party shall have executed and delivered a counterpart hereof, whether or not the same counterpart is executed and delivered by each Party. When so executed and delivered, each such counterpart shall be deemed an original and all such counterparts shall be deemed one and the same document. Transmission of images of signed signature pages by facsimile, e-mail or other electronic means shall have the same effect as the delivery of manually signed documents in person.

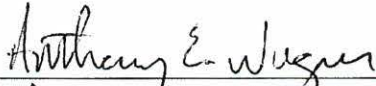
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IN WITNESS WHEREOF, the parties hereto have caused this SECONDAMENDMENT TO GROUND LEASE AND EASEMENT AGREEMENT to be executed by their respective duly authorized representatives as of the date first above written.

DUKE ENERGY CAROLINAS, LLC

By:   
Name: Robert F. Caldwell  
Title: SVP & President, Duke Energy Renewables & Business Development

CLEMSON UNIVERSITY

By:   
Name: Anthony E. Wagner  
Title: EMP Senior Operations